IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPEAL 907 NO. OF 2001

Dattu Bhausing Chavan Prisoner No. C-1398, Kolhapur Central Prison, Kalamba, Kolhapur-416007	]]]]	Appellant/ori. accused
Versus		
The State of Maharashtra	]	Respondent/ orig.complainant

Miss Savita Suryawanshi, Advocate (appointed) for the appellant-accused.
Smt. Usha Kejariwal, APP, for the Respondent.

Coram : N. V. Dabholkar and Smt.V.K.Tahilramani, JJ.
Date : February 17, 2006.

Oral Judgment (Per: Dabholkar, J.)

1. The appellant was held guilty and convicted for offences punishable under Sections 302, 394, 364, 506 (II), 201 and 323 of Indian Penal Code, by the 4th Additional Sessions Judge, Satara, while concluding Sessions Case No. 46 of 2000. The appellant is sentenced to suffer life imprisonment, pay a fine of Rs.1000/-, in default, rigorous imprisonment for one month, so far as offence of murder is concerned. On remaining five counts also, different substantive sentences and different amounts of fine are imposed,

with default sentences. Present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against the said judgment and order, by convicted accused.

2. The incident in question, took place on 23.10.1999, sometime after 6.00 p.m. The deceased Parubai Mithare was the mother of the complainant Hamjubai. Hamjubai, although married to one Raju Sarole, was divorced by him about three years prior to the alleged incident and, therefore, she was staying with her parents at Ram nagar, Satara. The victim Parubai had frequent quarrels with her husband. One Surekha was neighbour of the deceased. The deceased had narrated to Surekha about her frequent quarrels with husband. Eventually, neighbour Surekha is the niece of accused Dattu. Surekha informed the victim that the accused is **Devrushi** and he would be able to help the mother, regarding her disturbed marital life due to frequent quarrels of the spouses. Accused was resident of Wadhe, Taluka and District Satara. Surekha used to take the deceased Parubai to the place of accused for treatment " ------ " (Utara).

. On 23.10.1999, while the complainant and the victim Paru (mother) were present at home, accused had come to neighbour Surekha and Surekha approached

Parubai, informing her that she was called by the accused. This was at about 1.00 p.m. Victim Parubai accompanied Surekha, to her house. Parubai was advised that she should accompany him to Wadhe for Utara. Therefore, Parubai and complainant Hamjibai came to Satara at about 2.30 p.m. at Guruwar Peth (Paraj), where it was decided to meet the accused. The accused was present. By making the complainant sit in the shadow, mother and accused purchased some pooja articles, such as, turmeric powder, ochre etc. Thereafter, the three left for bus station, Satara. Some more articles were purchased while proceeding towards bus station. The three boarded a bus for going to Wadhe. After bus crossed Wadhe bus stop, accused asked conductor to stop the bus near canal. In fact, accused himself rang bell and caused the bus to halt.

. After alighting from the bus, accused took victim Parubai and complainant to a field, which was having standing crop of hybrid jawar. This field was close to a cyclo transmission company.Upon reaching there, the accused tied hands of the victim Parubai, behind her back. He also clouted her eyes under the guise that such procedure was necessary for doing Utara. Thereafter, accused also tied hands of the complainant behind her back and subsequently her legs. He also clouted her eyes. On being questioned about such an

action, accused told her that he was going to perform process of Utara against the complainant also. Thereafter, accused started taking away the victim Parubai. At this juncture, when the complainant tried to raise alarm, accused turned back and scloded the complainant, by saying that not shout, I will stab you. " He also gave her few kicks. Saying that after mother, he will "----------" i.e. "Do not shout,I will stab you.". He also gave her few kicks. Saying that after mother, he will perform Utara of complainant, accused took away mother Parubai.

. The complainant, somehow, got rid of the ties. Initially, she rescued her hands and then her legs, as well. When this incident occurred, it was dusk time of about 7.00 p.m. The complainant rushed to the nearby house and for help, she knocked the door. She was advised to go to the company for necessary help. The complainant approached the watchman of the company (PW-3 Pralhad Pawar) and narrated him the entire episode. According to the complainant, somebody from the company sent a tempo to Ramnagar and after sometime, the brother of the complainant along with some boys reached the location. This was at about 11.00 p.m. The complainant showed the spot to the brother, the party had a futile search for the victim and was required to return to the company without success. The vehicle, therefore,

reached the complainant, her brother and others to bus station, Satara. This was at about 1.00 a.m. of 24.10.1999. The complainant registered her complaint (Exh.15) with Satara Taluka police station, which is registered as CR No. 144 of 1999 at 03.30 hours. This complaint set the investigation into motion, which was carried by API Sambhaji Patil (PW-11).

. After usual procedure, such as filing of charge sheet, committal of case, the trial has ended in conviction, which is under challenge.

3. The prosecution has relied upon evidence of as many as 11 witnesses and they can be conveniently described in the order of their examination.

. The complainant Hamjubai deposed as first witness for the prosecution. PW-2 Ashok Karande is a resident of Ramnagar. He was one of the parties, who accompanied brother of the complainant in the vehicle sent by the company and which searched for the victim on the night between 23rd and 24th October, 1999. PW-3 Pralhad Pawar is the factory watchman, who had rendered all the assistance to the complainant. PW- 4 Ramchandra Shinde has his residence in the vicinity of the said factory. He was one amongst crowd that had gathered and to whom the complainant had spoken her misery. Spot

panchanama (Exh.24) was drawn in the presence of PW-5 Dnyandeo. He was also present when panchanama of another spot i.e. location of the well from which the dead body of Parubai was recovered (Exh.25). Both these panchanamas are drawn in the early morning of 24.10.1999. PW-6 Subhash and PW-7 Sanjay, are the panch witness to the discovery at the instance of the accused. Under memorandum and discovery panchanama (Exhs. 28 and 28-A), cash of Rs.11,000/= and a knife are said to have been discovered from a location near Jyotiba temple on the way to village Sonawadi. The cash is said to be proceeds obtained by the accused by pledging ornaments of the victim with a goldsmith at Dapoli. Sanjay attended proceedings of couple of memoranda and couple of panchanamas (Exh.30 and 30/1) under which the shop of goldsmith was discovered and Exhibits 31 and 31/1, ornaments were recovered from the shop of the goldsmith. PW-8 Nasim Patwekar is comparatively less important witness. The material for worship,before proceeding to the spot of occurrence, was purchased from his shop by the victim. PW-9 Yusuf Patel resident of Gajiyawadi is a son of police patil of the same village. On 6.11.1999, 4-5 youths of Ramnagar had brought the accused before him in a tied condition and at the request of those youths, he gave intimation of arrest of the accused, to Satara Taluka Police Station. Thereafter police party approached and took charge of

the accused. PW-10 Motilal Jain of Dapoli is the goldsmith with whom the ornaments were pledged by the accused. Investigation was carried out by PW-11 Sambhaji Patil, API.

4. So far as defence of the accused is concerned, on reference to his statement under Section 313 of the Code of Criminal Procedure, 1973, it appears that the accused has consistently answered all the questions, by saying that, 'it is false'. He has not been able to assign any reason why the witnesses are deposing against him. He did not choose to examine any defence witness. However, he concluded his statement, by saying as under;

> " I and my wife were dealing in the business of bangles. I used to keep money with my wife. She had purchased some ornaments utilising the amount given by me. On the next day of my arrest, police obtained those ornaments from my wife. False panchanama was drawn. I do not want to say anything more. "

5. Learned Counsel for the appellant has strenuously taken us through the entire prosecution evidence and entire part of reasons from the judgment. We may record here itself that this was an arduous task,

because all this material runs into about 140 pages. We must record peculiarity of the manner in which the trial was conducted. Learned defence Counsel has indulged into quite a lengthy cross of each and every witness. Advocate Ms. Suryawanshi has faithfully taken us to each and every witness, each and every line and drawn out all possible points. Lengthy cross examination seems to have made the trial very lengthy. Eventually, on reference to the judgment of the trial court, we must record that, the learned defence counsel in the trial court himself has not been able to draw out any points of substance, or crystalize concrete defence. The trial court has consequently given a different treatment to the matter. In stead of crystalizing the circumstances, by which the prosecution attempted to bring the guilt home and how it succeeded or failed, the trial court has recorded its reasons, point by point. The court has considered the defences raised by the defence counsel, to which we shall refer little latter. Having rejected the defences raised and having expressed his inclination to place reliance upon witnesses, since he found them trustworthy, the learned trial judge recorded a finding of guilty, so far as offences punishable under Sections 364 (kidnapping, but, in fact, it should be said to be abduction since the victim was aged 50 years), 302 (murder of Parubai), 506 (II) (threatening the complainant Hamjubai with apprehension to her life),

section 323(for kicking Hamjubai in abdomen) and 201 IPC (for concealing the crime). Learned trial judge has rightly held that charge under Section 420 IPC (cheating for the purpose of persuading the victim to deliver the property), does not survive, once the offence under Section 394 of IPC is held proved. Learned trial judge has thus held charge under Section 394 IPC (robbery) as proved.

6. We must say that there is no direct evidence and there is no eye witness account, even that of the complainant, because it is story of the complainant before commission of any offence, the accused had clouted the vision of the complainant, tied her hands and legs and thereafter, he committed other offences, except abduction. The complainant Hamjabai provides direct evidence of abduction, so also offences under Sections 506 (II) and 323 IPC, of which she was victim. But so far as offences under Section 302 and 394 IPC are concerned, the same are required to be inferred by circumstances brought on record.

. In spite of having gone through lengthy cross examination of the witnesses, it must be said that the learned defence counsel at the trial court has not been able to draw out any material for which we can record a finding that the witnesses are unreliable, or

untrustworthy. No doubt, learned Counsel for the appellant claimed that the prosecutrix is an interested witness. But, in the facts and circumstances of the case, she cannot be disbelieved on that sole count, for the simple reason that she was the victim of the part of the incident. She was eye witness, to the extent of offence under section 362 IPC. Learned Counsel for the appellant blamed the prosecution for not having examined Surekha. This is because, Surekha is a pivotal link in the prosecution story. It is claimed by complainant that her mother Parubai had disclosed to Surekha about skirmishes between herself and her husband and Surekha had suggested that the accused knew the art of necromancy and removal of demonic spell by means of incantation. Parubai was convinced that the accused could remove demonic spell upon her, by the said process and her matrimonial life may proceed without quarrels between herself and her husband. We are not inclined to disbelieve the prosecution story, because Surekha is not examined, for the reason that she is niece of accused, or at least related to the accused. The accused was frequent visitor to Surekha and prosecution could not have expected Surekha to depose against her own relative. Had she ben examined, the defence would have blamed the prosecution for making Surekha a witness, although she could have been an accused, since she was present when she introduced victim to the accused. We

are, therefore, not inclined to accept the submission of Advocate Ms. Suryawanshi that, non-examination of Surekha is sufficient to disbelieve the genesis of the prosecution story.

. We find no reason to disbelieve the complainant Hamjabai. She claims to have accompanied the victim. She claims to have got herself rescued from the ties of the ropes, which were put by the accused, as soon as possible, and thereafter, she has sought help whichever was available in the form of watchman of the cyclo transmission company, located at a distance of 1000 feet from the place where her mother was taken away beyond her perception. Her complaint is registered with Satara police station, immediately after midnight hours, is guarantee against possibility of any premeditation or embellishment. On reference to Exhibit 15, it is evident that the same makes no reference to death of Parubai, because the dead body was recovered in the morning. This is a guarantee that the complaint was registered at hours past midnight and before sunrise of the next day. This also assures that Hamjabai had not added anything or narrated the incident in exaggerated manner. We are inclined to concur that the trial judge felt that she is a witness, who can be placed reliance upon.

. Hamjabai's evidence is sufficient direct evidence, so far as offences punishable under Sections 364, 506 (II) and 323 IPC are concerned. Although she is not the abducted person, she is companion of the person abducted, namely, mother Parubai. She herself is a victim, so far as offences under Section 506 (II) and 323 IPC are concerned. As we are inclined to believe Hamjabai, her evidence is sufficient to establish the crime under these penal provisions. So far as offences of murder and robbery are concerned, as rightly demonstrated by learned Counsel for the appellant, Hamjabai does not have accurate knowledge of the position of ornaments of the deceased. She may not be knowing all the details of all the ornaments, those were carried by the victim on her person. But, Hamjabai was certainly aware that her mother was earning member as she was dealing with spices at all weekly markets within the district, she was accumulating in the form of ornaments. Death and robbery are tried to be established, by relying upon following set of circumstances.

(i) Last seen together (evidence of Hamjabai)

(ii) Victim found dead in a well within a distance of couple of furlongs from the location

where the complainant was deserted by tying her hands and legs.

(iii) Death of Parubai was unnatural (by drowning) and she was found in such a condition, which rules out possibility of suicide.

(iv) Disposal of ornaments of the victim by the accused (proved by discovery of cash and ornaments, at the instance of the accused.).

7. We do not intend to refer to details from the evidence of PW-2 Ashok Karande, PW-3 Pralhad Pawar and PW-4 Ramchandra Shinde. They only corroborate the complainant Hamjabai. Ashok Karande is resident of the same locality i.e. Ramnagar, where the deceased was residing. He had been to the location at midnight hours, in the vehicle sent by PW-3 Pralhad Pawar, the watchman of the factory, who had rendered useful assistance to the complainant, when she narrated the incident to which she herself and her mother were victims. Ramchandra has residence near the factory gate and he was present when the complainant narrated grievance to Pralhad and who extended helping hand. Narration by these witnesses lend concrete support to

the deposition of the complainant. No doubt, there are few improvements over police statements, in the deposition of Pralhad and Ramchadra, but prompt lodging of complaint at 03.30 hours on 24.10.1999, by Hamjabai and reference to the occurrence at the company gate, in the FIR do not permit us to look to the evidence of these three witnesses with any doubts.

8. Two spot panchanamas were drawn in the presence of PW-5 Dnyandeo at both the locations, i.e. within the jawar crop and by the side of the well, under which some pooja material was recovered. Learned Counsel for the appellant was critical, because none of the members of search party, which was containing at least 5-6 persons, to night, found these articles within jawar crops. A bold submission was advanced that probability cannot be ruled out that the articles were planted there at midnight hours. We are unable to accept the submission of learned Counsel, of such a possibility. Because, for upholding such a possibility, all the witnesses will have to be at inimical terms with the accused. Otherwise, there is no reason why they should frame the accused, at the cost of exoneration of the genuine culprit, who murdered Parubai. In spite of lengthy cross examination, the defence has not suggested to any of the witnesses, that they are having animosity with the accused. This would also apply to discovery

panchas, Subhash and Sanjay (PWs.6 and 7). Subhash has witnessed memorandum of statement of accused and discovery of cash of Rs.11,000/=, as also the knife at the instance of information given by accused (Exhs.28 and 28-A). These proceedings have taken place on 8.11.1999, commencing from 9.30 a.m. and concluding at 11.00 a.m. Although the location, from where articles were discovered, was accessible, it is certainly a location which could not have been known to the complainant and the police. The accused seems to have discovered these articles by the side of a road leading to Sonavadi. The articles were hidden in the bushes of Karanja, in couple of plastic carry bags. There is one more reason why this discovery cannot be disbelieved. Cash of Rs.11,000/= is not a small amount which can be planted and shown as discovered at the instance of the accused.

. PW-7 Sanjay is a panch witness to the discovery of sari and purse of the victim under panchanamas (Exh.30 and 30-A), which proceedings took place on 10.11.1999, afternoon. This was followed by discovery of ornaments from custody of PW-10 Motilal, at Dapoli. No doubt, as rightly pointed out by learned Counsel for the appellant, Sanjay seems to have enjoyed a sound sleep in the vehicle during journey from Satara to Dapoli and, therefore, he may not be able to say

firmly that the accused guided them to Dapoli. The deficiency, if any, that could have remained in the prosecution case of discovery at the instance of accused, of the ornaments, is made good by examining goldsmith Motilal (PW-10). It is pertinent to note that he was not dealing with the accused for the first time, as he is acquainted with the accused and they had transactions in the past. Motilal knows that the accused is -------- (a person trading in bangles) and this is an admitted position, as can be confirmed from the statement of accused under Section 313 of Cr.P.C. that, 'the accused is **Kasar**'. We are unable to find any concrete reason, for which we can look to the evidence of PWs. 6,7 and 10 with disbelief. We, therefore, must say that the prosecution has, on the strength of the evidence of PWs 6, 7 and 10, established discovery of various articles at the instance of information given by the accused and those articles are identified by the complainant, as the articles of her deceased mother. No doubt, ornaments did not have any particular marks but the articles which the complainant must have seen mother wearing on the festive occasions, can be believed to have been properly identified by complainant Hamjabai. The ornaments were kept intact, because as per the narration of witness Motilal, those were to be returned to the accused on his paying back the amount of Rs.11,000/=, borrowed by the accused. Discovery of the

cash of Rs.11,000/=, as also ornaments worth Rs.11,000/=, although on two separate occasions, makes the value of the property double than the one, of which the victim is said to have been robbed. That makes it further improbable that the police have indulged into planting the discovery on the shoulders of the accused.

9. So far as death being unnatural and not suicidal is concerned, we may refer to evidence of the complainant, who has narrated that on the next morning, when she and policeman went for search of the dead body in the vicinity, the same was found in a well near the brooklet beyond the field. That time the dead body was floating When it was taken out, the hands of the victim were still tied behind the back. The buttons of the blous were open and the victim was naked below the waist. As rightly observed by the learned trial judge, if Parubai was to commit suicide, it was neither necessary for her to get her hands tied behind the back, nor she could have bothered to leave wearing apparels before jumping into the well. The learned Judge, therefore, justifiably, by relying upon medical evidence and the situation in which the dead body was taken out from the well, has held the death to be homicidal, for the reasons discussed in paragraph 10 of the judgment.

. We thus feel that all the circumstances enlisted

hereinabove are proved with firmness, by cogent evidence by the prosecution. It is thus evident that the accused allured the victim, by convincing her that, with his art of necromancy, he could give her relief about her quarrels with her husband, she was abducted to secluded location and there she was executed by throwing in the well. From the discovery, it can be said that riches with the victim was the motive, in all probability. The evidence on record, therefore, appears to have convincingly proved the offences punishable under Section 364, 302, 394, 506 (II) and 323 of IPC and consequently, section 420 IPC ought to go out of reckoning.

. So far as offence punishable under Section 323 IPC is concerned, at Exhibit 35 is the medical certificate regarding injuries suffered by Hamjabai, admitted on record under Section 294 of Cr.P.C., which shows that she had mild diffuse tenderness over abdomen and over umbilical region. It is the case of Hamjabai that she was kicked in the abdomen, by the accused. The post mortem notes at Exhibit 37, also admitted under Section 294, without examining Medical Officer, show that the victim had ligature marks around both the wrists, thereby confirming evidence of Hamjabai that, when the dead body was drawn out of the well, hands of the victim were still tied behind the back. Opinion

regarding cause of the death, as recorded in the post mortem notes, can be relied upon since the same is not much disputed.

10. The futility of the cross examination of the witnesses, although quite a lengthy, can be judged from the defences raised by the learned counsel for the accused before trial court. As will be seen from the discussion, none of these defences raised required any reliance on any material or admission during cross examination of the prosecution witnesses.

. In paragraph 14, argument of the defence counsel is considered that the deceased and complainant did not suspect, although bus crossed Wadhe bus stop and it was, therefore, desired that their conduct must be indicator of the fact that they had not suspected any ill motive of the accused. Even if this argument is to be accepted, that does not give any advantage to the defence. The victim Parubai was accompanying the accused under full belief that, he was capable of giving her some relief, by his art of necromancy.

. From the discussion in paragraph 16 of the judgment of the trial court, it is evident that, it was argued before the trial court that the prosecution has not sufficiently brought on record, evidence to show

that the accused was practising incantation and necromancy. This evidence could have come on record only through Surekha Chavan, who is related to the accused and was most unlikely to speak in favour of the accused. Whether the accused knew such art or not, is immaterial. It appears that the accused had convinced the victim that he knew such art.

. It was argued, and this argument is dealt with in paragraph 18 of the learned judge, that delay in recovery makes the story of robbery, unreliable. Although the incident took place on 23.10.1999, the accused was arrested only on 6.11.1999 and, therefore, the submission of learned defence counsel was required to be referred only for rejection.

. It was pleaded before the trial court that the two pieces of ropes recovered at the location of incident were not of the same rope (paragraph 19 of the judgment). Learned judge has rightly repelled this argument, by observing that the two pieces could have been used for tying hands and legs, as claimed by the complainant Hamjabai and it is nobody’s case that only one rope was cut into two pieces and was used for the purpose. It was also argued before the trial court that there was no panic in the house of deceased, by the time vehicle of the company searched for brother of the

complainant. There is sufficient material on record to show that the deceased herself was trading in spices; was going from places to places in weakly bazaar and returning home late on a given day, may not be a rare occasion for the family to panic. (paragraph 21 of the judgment). It was also tried to be argued that the conduct of PW-3 Pralhad is unnatural, because he himself did not contact the police. We are in agreement with the learned trial judge. Pralhad rendered whatsoever assistance he could, to the complainant and then left the matter to the complainant and her relatives for setting criminal law into motion.

11. With all her efforts, Ms Savita Suryawanshi, learned defence counsel, has tried to point out some new points. We have already dealt with her argument that the complainant should be disbelieved because she is interested witness. The complainant being a victim herself, her evidence cannot be rejected, merely because she is interested witness. In order to persuade the court to disbelieve the complainant, the defence ought to have brought much more material through her cross-examination, to demonstrate that she is a witness with scant regard for the truth.

. Certainly, PW-8 Nasim Patavekar has improved over his police statement, in saying that the girl

accompanying the lady, who purchased the worship material, was sitting in front of the shop on the plinth. That does not make Nasim, a witness of doubtful character. That she was resting on the platform, is deposed by the complainant Hamjabai.

. The variance between the complainant and PW-2, whether the search party was having torch or not, can be explained by possibility that the person, who was holding the torch spoke about availability of the same, but the complainant, who did not have torch, has deposed that there was no torch at the time of search.

. Advocate Ms Suryawanshi has placed heavy reliance on the statement of complainant that the accused tied hands of the deceased and clouted her eyes, after pooja was over. In the panchanama of scene of offence (Exhibits 24 and 25), there does not appear any description of any material arranged for the purpose of pooja. Eventually, as per Exh.24, couple of threads, receptacle of kumkum, receptacle of five green bangles, were found at the location in jawar crop and another receptacle of 5 scented sticks was found, by the side of the well. Although Hamjabai said that they were tied after pooja, it is not her case that any deities were placed or flowers offered or showered, which required arrangement of articles at the location. Consequently,

there is no surprise that no such arrangements were noticed at the location. Furthermore, if the pooja could be arranged, it also could be dismantled. A possibility cannot be ruled out that searching party might have walked over the same at midnight hours. Admission by the complainant, relied upon by learned counsel for appellant, therefore, does not persuade us to believe that the incident did not occur as narrated by Hamjabai.

12. For the reasons discussed hereinabove, we are convinced that the prosecution has a complete chain of circumstances to establish the offences under Section 302, 394 IPC, for which there is no direct evidence. It has direct evidence, so far as offence punishable under Section 364 , 506 (II) and 323 IPC, are concerned.

13. The appeal is, therefore, dismissed.

The Registrar (Judicial) shall ensure supply of a certified copy of this judgment, free of costs; to the appellant, through prison authorities.

Advocate Ms. Sawita Suryawanshi was appointed as Advocate to conduct the appeal on behalf of the appellant-prisoner, at the costs of the

State. We quantify her professional charges at Rs.2500/=.

(SMT.V.K.TAHILRAMANI,J.) **(N.V.DABHOLKAR,J.)**

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